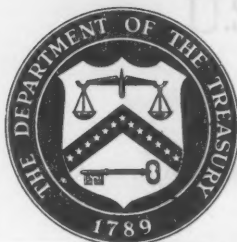


T 1-11/3; 10/38

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Customs and
Patent Appeals and the United States
Customs Court

Vol. 10

SEPTEMBER 22, 1976

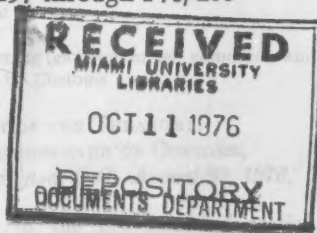
No. 38

This issue contains

T.D. 76-250 through 76-259

C.R.D. 76-7 and 76-8

Protest abstracts P76/197 through P76/200



DEPARTMENT OF THE TREASURY

U.S. Customs Service

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
Concerning Customs and Related Matters

and Decisions

of the United States Court of Customs and
Excise and the United States

NOTICE

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U.S. Customs Service

(T.D. 76-250)

Licensed Public Gauger

Approval of licensed public gauger performing gauging under standards and procedures required by Customs

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 31, 1976.

Notice is hereby given pursuant to the provisions of section 151.43 of the Customs Regulations that the application of Maritime Surveys International, Inc., 411 Dorrington Boulevard, Metairie, Louisiana 70005, to gauge imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43(b) of the Customs Regulations is approved.

(BON-3-08)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 76-251)

Licensed Public Gauger

Approval of licensed public gauger performing gauging under standards and procedures required by Customs

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 30, 1976.

Notice is hereby given pursuant to the provisions of section 151.43(d) of the Customs Regulations that the application of Jenkins West, Inc., 2251 Orleans Drive, Pinole, California 94564, to gauge

imported petroleum and petroleum products in all Customs districts in accordance with the provisions of section 151.43(b) of the Customs Regulations is approved.

(BON-3-08)

VERNON D. ACREE,
Commissioner of Customs.

(T.D. 76-252)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 6, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

August 2, 1976	.....	\$0. 2031
August 3, 1976	.....	. 2032
August 4, 1976 2035
August 5, 1976 2038
August 6, 1976 2036

Iran rial:

August 2-6, 1976	\$0. 0143
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Philippines peso:

August 2-6, 1976	\$0. 1320
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Singapore dollar:

August 2, 1976	\$0. 4061
August 3, 1976 4061
August 4, 1976 4061
August 5, 1976	.....	. 4056
August 6, 1976	.....	. 4059

Thailand baht (tical):

August 2-6, 1976..... \$0.0490

(LIQ-3)

G. S. SHREVE,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76-253)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 13, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

August 9, 1976..... \$0.2038
August 10, 1976..... 2037
August 11, 1976..... 2035
August 12, 1976..... 2036
August 13, 1976..... 2036

Iran rial:

August 9-13, 1976..... \$0.0143

Philippines peso:

August 9-13, 1976..... \$0.1320

Singapore dollar:

August 9, 1976.....	\$0. 4059
August 10, 1976.....	. 4060
August 11, 1976.....	. 4060
August 12, 1976.....	. 4065
August 13, 1976.....	. 4065

Thailand baht (tical):

August 9-13, 1976.....	\$0. 0490
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(LIQ-3)

G. S. SHREVE,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76-254)

Foreign currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the
Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 12, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(e), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 76-201 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

France franc:

August 12, 1976.....	\$0. 1995
August 13, 1976.....	. 1998

(LIQ-3)

G. S. SHREVE,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

CUSTOMS

5

(T.D. 76-255)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS;
Washington, D.C. August 20, 1976

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

August 16, 1976	\$0.2035
August 17, 1976	.2034
August 18, 1976	.2036
August 19, 1976	.2036
August 20, 1976	.2036

Iran rial:

August 16-20, 1976	\$0.0142
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Philippines peso:

August 16-20, 1976	\$0.1320
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Singapore dollar:

August 16, 1976	\$0.4065
August 17, 1976	.4067
August 18, 1976	.4067
August 19, 1976	.4067
August 20, 1976	.4056

Thailand baht (tical):

August 16-20, 1976	\$0.0490
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(LIQ-3)

G. S. SHREVE,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

CUSTOMS

(T.D. 76-256)

Foreign currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 16, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in Treasury Decision 76-201 for the following country. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

France franc:

August 16, 1976.....\$0. 1998

August 17, 1976.....2004

(LIQ-3)

G. S. SHREVE,
for JOHN B. O'LOUGHLIN,
Director,
Duty Assessment Division.

(T.D. 76-257)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippines peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 31, 1976.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified

buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Hong Kong dollar:

August 23, 1976	.....	\$0. 2035
August 24, 1976	.....	. 2037
August 25, 1976 2040
August 26, 1976 2040
August 27, 1976 2040

Iran rial:

August 23-27, 1976	\$0. 0142
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Philippines peso:

August 23-27, 1976	\$0. 1320
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Singapore dollar:

August 23, 1976	\$0. 4052
August 24, 1976 4057
August 25, 1976 4059
August 26, 1976 4061
August 27, 1976 4065

Thailand baht (tical):

August 23-27, 1976	\$0. 0490
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(LIQ-3)

G. S. SHREVE,
for **JOHN B. O'LOUGHLIN,**
Director,
Duty Assessment Division.

(T.D. 76-258)

*Customs Financial and Accounting Procedure—Customs Regulations
amended*

Section 24.4(f)(2) of the Customs Regulations, amended, to increase the interest rate on delinquent payments of deferred taxes on imported alcoholic beverages and to reflect the method by which that interest rate may be changed

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 24 - CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Section 24.4(f)(2) of the Customs Regulations (19 CFR 24.4(f)(2)) provides that, when any bill for deferred taxes on imported alcoholic beverages is not paid on time, interest at the rate of 6 percent per annum shall be charged on the delinquent tax bill. Section 6621 of the Internal Revenue Code of 1954 (26 U.S.C. 6621), added by Public Law 93-625 of January 3, 1975, and effective on July 1, 1975, increased this interest rate to 9 percent per annum. That section also requires the Secretary of the Treasury or his delegate to periodically adjust this interest rate to correspond, to the nearest full percent, to the existing "adjusted prime interest rate charged by banks" as defined in section 6621(c) of the Internal Revenue Code.

Pursuant to this latter requirement, Revenue Ruling 75-487, dated November 10, 1975, reduced the interest rate to 7 percent per annum, effective February 1, 1976. This 7 percent rate will remain in effect at least until January 31, 1978, when the rate may once again be adjusted in accordance with section 6621 of the Internal Revenue Code.

Accordingly, in order to provide for the new procedure by which the interest rate may be changed, paragraph (f)(2) of section 24.4 of the Customs Regulations (19 CFR 24.4(f)(2)) is amended to read as follows:

(T.L.R. 70-252)

Customs Financial and Accounting Procedure—Customs Regulations
amended

Section 244(f)(2) of the Customs Regulations, amended, to increase the interest rate on delinquent payments of deferred taxes on imported alcoholic beverages and to reflect the method by which that interest rate may be changed.

DEPARTMENT OF THE TREASURY
OFFICE OF THE COMMISSIONER OF CUSTOMS
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART II—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Section 244(f)(2) of the Customs Regulations (19 CFR 24.4(f)(2)) provides that, when any bill for deferred taxes on imported alcoholic beverages is not paid on time, interest at the rate of 6 percent per annum shall be charged on the delinquent tax bill. Section 6621 of the Internal Revenue Code of 1954 (26 U.S.C. 6621), added by Public Law 83-625 of January 2, 1975, and effective on July 1, 1975, increased this interest rate to 8 percent per annum. That section also requires the Secretary of the Treasury or his delegate to periodically adjust this interest rate to correspond to the interest rate paid on "adjusted prime interest rate charged by banks" as defined in section 6621(e) of the Internal Revenue Code.

Pursuant to this latter requirement, Revenue Ruling 75-487, dated November 10, 1975, reduced the interest rate to 7 percent per annum, effective February 1, 1976. This 7 percent rate will remain in effect at least until January 31, 1978, when the rate may once again be adjusted in accordance with section 6621 of the Internal Revenue Code.

Accordingly, in order to provide for the new procedure by which the interest rate may be changed, paragraph (f)(2) of section 244 of the Customs Regulations (19 CFR 24.4(f)(2)) is amended to read as follows:

§ 24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(f) *Payment procedure.*

(1) * * *

(2) *Interest on overdue accounts.* When any bill for deferred taxes is not paid within the period specified in subparagraph (1) of this paragraph, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, collected, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6621(b).

(R.S. 251, as amended, sec. 624, 46 Stat. 759, sec. 201, 72 Stat. 1322, 1334, 1335, Ch. 736, 68A Stat. 917 (19 U.S.C. 66, 1624, 26 U.S.C. 5007, 5054, 5061, 7805))

Because this amendment merely conforms the Customs Regulations to a statutory amendment, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. The statutory change reflected by this amendment was effective July 1, 1975. (095362)

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved September 2, 1976.

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the FEDERAL REGISTER September 13, 1976 (41 FR 38767)]

§ 214. Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse for consumption.

(1) Payment procedure.

(1)

(2) Interest on unpaid account. When any bill for deferred taxes is not paid within the period specified in subparagraph (1) of this paragraph, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6031(d).

(E.R. 201, as amended, sec. 624, 46 Stat. 738, sec. 201, 72 Stat. 1332, 1334, 1335, 68 Stat. 917 (19 U.S.C. 601, 1034, 26 U.S.C. 5907, 5924, 5925, 1535).)

Because this amendment merely conforms the Customs Regulations to a statutory amendment, notice and public procedure thereon is found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date. The statutory change reflected by this amendment was effective July 1, 1976. (008302)

(ADM-2-62)

Vernon D. Agnew,
Commissioner of Customs.

Approved September 2, 1976.

David R. Macdonald,
Assistant Secretary of the Treasury.

Published in the Federal Register September 18, 1976 (41 FR 36767)

(T.D. 76-259)

Ports of Entry—Customs Regulations amended

Section 1.2(c), Customs Regulations, amended to extend the port limits of Mobile, Alabama

DEPARTMENT OF THE TREASURY,
Washington, D.C., September 2, 1976.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 1—GENERAL PROVISIONS

On June 25, 1976, a notice of proposal to extend the port limits of Mobile, Alabama, in the Mobile, Alabama, Customs district (Region V) was published in the *FEDERAL REGISTER* (41 FR 26224). No comments were received regarding the proposal.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR, 1949-1953 Comp., Ch. II), and pursuant to the authority provided by Treasury Department Order No. 190, Rev. 11 (41 FR 20198), the port limits of Mobile, Alabama, in the Mobile, Alabama, Customs district (Region V), are extended to include all the territory within the boundaries of Mobile and Baldwin Counties, Alabama.

To reflect this change, the table in section 1.2(c) of the Customs Regulations (19 CFR 1.2(c)) is amended by deleting the language "(including territory described in E.O. 10042, Mar. 10, 1949; 14 FR 1155)." which appears after "MOBILE, ALA." in the column headed "Ports of entry" in the Mobile, Alabama, Customs district (Region V) and adding in lieu thereof the language "(including the territory described in T.D. 76-259)."

(Sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended (19 U.S.C. 1,2))

Effective date. This amendment shall become effective 30 days from the date of publication in the *FEDERAL REGISTER*. (096008)

(ADM-9-03)

DAVID R. MACDONALD,
Assistant Secretary of the Treasury.

[Published in the *FEDERAL REGISTER* September 13, 1976 (41 FR 38766)]

(T.D. 76-259)

Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza
New York, N.Y. 10007

Chief Judge

Nils A. Boe

Judges

Paul P. Rao

Morgan Ford

Scovel Richardson

Frederick Landis

James L. Watson

Herbert N. Maletz

Bernard Newman

Edward D. Re

Senior Judges

Mary D. Alger

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Customs Rules Decisions

(C.R.D. 76-7)

BECK DISTRIBUTING CORP. v. UNITED STATES

Opinion and Order on Plaintiff's Motion for Summary Judgment

Court Nos. 60/1977, etc.

Port of New York

[Motion denied.]

(Dated August 23, 1976)

Allerton deC. Tompkins for the plaintiff.

Rez. E. Lee, Assistant Attorney General Ira J. Grossman, trial attorney, for the defendant.

NEWMAN, Judge: This action is before me on plaintiff's motion for summary judgment under rule 8.2. Defendant opposes the motion on the ground that there exists a genuine issue as to a material fact that requires resolution by a trial.

The issue for determination is the proper tariff classification for certain motorcycle helmets imported from West Germany through the port of New York during the period of 1961 to 1967. Depending upon the date of entry, the merchandise was assessed with duty either at the rate of 21 cents per pound plus 17 per centum ad valorem under the provision in paragraph 1539(b) of the Tariff Act of 1930, as modified by T.D. 54108, for manufactures wholly or in chief value of any product of which any resin or resin-like substance is the chief binding agent; or at the rate of 19 cents per pound plus 15.5 per centum ad valorem, or at the rate of 17 cents per pound plus 14 per centum ad valorem, or at the rate of 15 cents per pound plus 12.5 per centum ad valorem under the provision for headwear of reinforced or laminated plastics in item 703.70 of the Tariff Schedules of the United States, or under item 703.70, as modified by T.D. 66-205.

Plaintiff claims that, depending upon the date of entry, the helmets are properly dutiable at the rate of 15, 13½ or 12 per centum ad valorem under the provision in paragraph 1531 of the Tariff Act of 1930, as modified by T.D. 54108, T.D. 55615 and T.D. 55649, for wearing apparel of which leather is the component material of chief value, or at the rate of 12 per centum ad valorem under the provision in item 703.65 of the Tariff Schedules of the United States for headwear of leather.

In support of its motion, plaintiff has submitted affidavits by Sam Guevara, plaintiff's import manager; and by Wolfgang E. Petzold, export director of Hans Romer of Neu-Ulm, West Germany, the manufacturer of the helmets. Guevara's affidavit was sworn to on April 21, 1976, shortly before the filing of plaintiff's motion; Petzold's affidavit was executed on April 17, 1975, approximately a year before the filing of the motion.

Defendant submitted a memorandum of law, but submitted no controverting documents, in opposition to plaintiff's motion.

The sole question raised by the parties is whether the helmets in issue are in chief value of leather, as claimed by plaintiff.¹

Guevara's affidavit avers that he was plaintiff's import manager from 1960 and in that capacity ordered the helmets from Hans Romer of Neu-Ulm, West Germany; that the helmets "were ordered to be made in such a way that leather would be the component material of

¹ But see the discussion concerning *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958), *infra*.

chief value, and the details set forth in the affidavit of Wolfgang E. Petzold, the Export Director of Hans Romer dated April 17, 1975 giving the compositions and material costs have been the basis upon which orders for the specified helmets have been placed by me for Beck Distributing Corp., namely, they must be in chief value of leather"; and that "[d]uring the period from the middle of 1963 through the middle of 1967, the [helmets] * * * were classified by the Customs officials in New York in accordance with the entry paper as being in chief value of leather, the only exceptions were for errors made either by the agent who made entry or by a new import specialist who had not previously passed upon the tariff classification of the above specified helmets".

Petzold's affidavit avers that he had been the export director of the German manufacturer for the past 20 years and was "personally familiar with all purchase and manufacturing costs" of the helmets in question; and that he had "taken cost details from the records kept by * * * [his] Company and of the 'Breakdown of raw materials and manufacturing or processing costs' attached to the invoices, and know[s] that the figures set forth below are correct and accurate". Thereafter, the affidavit sets forth a breakdown for the years 1962 through 1967 of "the purchase prices of the raw materials used in each helmet, plus * * * [the] costs of manufacturing or processing such materials up to the time when they were ready to be assembled together or mounted".

Plaintiff argues that the affidavits of Guevara and Petzold establish that the helmets are in chief value of leather. Defendant contends, in its memorandum, that "these affidavits are so deficient in factual content that they should be given no weight at all in resolving the factual dispute in this case".

The well-settled rule for determining the component material of chief value is that "the value of the materials of which an article is composed shall be ascertained at the time when they have reached such condition that nothing remains to be done to them except to put them together". *United States v. Jovita Perez*, 44 CCPA 35, 39, C.A.D. 633 (1957); see also *United States v. H. A. Caesar & Co.*, 32 CCPA 142, 143, C.A.D. 299 (1945). Thus it is plaintiff's burden to establish that the cost of the leather component of the helmets, including the cost of processing the leather prior to assembly, exceeded the cost of any other component at the time the helmets were assembled.

Initially, we shall consider Guevara's affidavit. There is no showing that the affiant had any personal knowledge of or control over the

manufacturer's actual costs incurred for the materials and processing thereof prior to assembly into the helmets. What costs the importer may have specified in its orders for component materials and the processing thereof simply does not prove what actual costs were incurred by the manufacturer.

Plaintiff relies heavily upon Guevara's averment that other shipments (with some exceptions) of helmets were classified by the customs officials in New York on the basis that they were in chief value of leather. However, such averment is irrelevant since plaintiff did not claim in its protests that the challenged assessments constituted an unlawful change of an established and uniform classification practice. See *Carson M. Simon & Co. v. United States*, 57 Cust. Ct. 224, C.D. 2768 (1966); *Bauer Alphabets, Inc. v. United States*, 54 Cust. Ct. 255, C.D. 2540 (1965); *Pacific Mutual Sales Co. v. United States*, 36 Cust. Ct. 100, C.D. 1758 (1956). And, in any event, such established and uniform practice is not at all shown by Guevara's affidavit.

Turning now to Petzold's affidavit, I find that it has several serious deficiencies. Rule 8.2(f) provides that supporting affidavits, "shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein" (emphasis added). Although Petzold's affidavit alleges his personal familiarity with "all purchase and manufacturing costs" related to the helmets in question, no basis for his asserted personal knowledge is affirmatively shown in the affidavit. Thus, for example, there is no indication that Petzold ordered or purchased the materials, or that he disbursed payment for the materials, or that he had any responsibility for manufacturing or processing the materials, or that he personally kept or supervised the keeping of cost records. In point of fact, Petzold's affidavit is completely devoid of any indication respecting his duties as "export director". Under these circumstances, the affidavit falls far short of showing affirmatively that the affiant possessed the requisite personal knowledge and was competent to testify concerning the matters stated in his affidavit, as required by rule 8.2(f).

Aside from the lack of an affirmative showing of the affiant's personal knowledge and competence to testify concerning the material and manufacturing costs, the affidavit is significantly lacking in cost details. While the affidavit avers that Petzold consulted "cost details from the records kept by [his] * * * company", no such records (or copies thereof) were produced in support of the affidavit.² Moreover,

² It is noted that counsel for plaintiff states in his memorandum that "any pertinent foreign records pertaining to the years 1962-1967 would now be difficult to obtain". (Emphasis added.) The cost records, however, were apparently available in April 1975 when Petzold allegedly examined the records of his company for purposes of executing his affidavit for use in this litigation.

the affidavit itself does not disclose the separate costs of the materials and the labor and other expenses incurred by the manufacturer in processing those materials to the point at which they were ready for assembly into the finished helmets. While a separation of the costs of materials and the costs of processing them may not be necessary in every case, here it has been noted that all cost figures purportedly remained unchanged throughout 1962, 1963, and 1964, without any explanation of how the cost figures were calculated or why *all of the various costs remained the same to the penny over the three-year period*.³ Defendant, with reasonable cause for doubt, has challenged these unvarying cost figures as "highly suspect on their face" and as "preposterous, especially in view of the fact that the listed cost of each material supposedly includes the cost of pre-assembly improvements made upon the material". Hence, defendant justifiably asserts that "[i]t is extremely unlikely that the costs of all of these improvements did not vary by so much as one penny for three years".

It is emphasized that unlike testimony obtained from a witness residing in a foreign country pursuant to a commission or letters rogatory (rule 7.7), which is subject to cross-interrogatories (rule 7.7(c)), affidavits offered in support of a motion for summary judgment (rule 8.2(f)) are ex-parte statements not subject to cross-examination. Inasmuch as ex-parte affidavits lack the safeguard of cross-examination, the court must give close scrutiny to such affidavits, especially here, where the issue relates to the costs of component materials for merchandise manufactured and shipped some 8 to 14 years prior to the execution of the affidavit, and the cost figures stated therein are based upon unproduced (and possibly presently unavailable) records. In this connection, compare the very recent decision of our appellate court in *Andy Mohan, Inc. v. United States*, 63 CCPA —, C.A.D. 1173, —F. 2d— (1976), respecting proof of the cost of materials, fabrication, and packing for the purpose of constructed value. There, the court stated (63 CCPA at —):

* * * The Customs Court correctly scrutinized the affidavits with care, because, being ex-parte, they were not subject to cross-examination. Moreover, they are entitled to little weight, being incomplete and based on unproduced records, and having been executed years after the transactions to which they attest.

Under the circumstances herein, all elements of the asserted costs and the basis of Petzold's personal knowledge and competence to testify concerning them should have been affirmatively disclosed in his affidavit.

³ Even the costs of unidentified "miscellaneous materials" purportedly remained unchanged over the three-year period.

Although defendant did not file a counter-affidavit (or any other controverting evidence) in opposition to plaintiff's motion, under the circumstances presented here, the court is not compelled to accept as true the cost figures disclosed in the Petzold affidavit. *Cf. Subin v. Goldsmith*, 224 F. 2d 753, 759 (CA 2, 1955), *cert. denied*, 350 U.S. 883 (1955). In view of the substantial deficiencies in Petzold's affidavit, especially as it relates to cost data peculiarly within the knowledge of the German manufacturer, I conclude that there is a genuine issue of fact, and that plaintiff is not entitled to summary judgment.

Finally, although the parties have limited the issue to component material of chief value, and have raised no issue concerning common meaning, I have noted that helmets, such as those involved here, have been held not to be within the common meaning of the term "wearing apparel" in paragraph 1531 of the Tariff Act of 1930, as modified by T.D.'s 52373 and 52476. *Antonio Pompeo v. United States*, 40 Cust. Ct. 362, C.D. 2006 (1958). Indeed, *Pompeo* may be deemed *stare decisis* insofar as plaintiff's claim under paragraph 1531 is concerned. *Cf. United States v. L. Bailin & Son, Inc.*, 61 CCPA 17, C.A.D. 1111, 487 F. 2d 916 (1973).

Accordingly, plaintiff's motion is denied.

(C.R.D. 76-8)

ED ALEXANDER v. UNITED STATES

*On Plaintiff's Motion To Set Aside
Order of Dismissal and for Suspension*

Court No. 74-4-01007

Port of Los Angeles

[Motion denied.]

(Dated August 25, 1976)

Glad, Tuttle & White (Edward N. Glad of counsel)
for the plaintiff.

Rez E. Lee, Assistant Attorney General (Sidney N. Weiss, trial attorney),
for the defendant.

NEWMAN, Judge: Plaintiff has moved to set aside this court's order entered on July 16, 1976, dismissing the action for lack of prosecution. Additionally, plaintiff seeks suspension of the case under a pending test case. Defendant opposes setting aside the dismissal on the ground that plaintiff's motion fails to comply with the rules of the court.

For the reasons stated, plaintiff's motion is denied. The background of the present proceedings, briefly, is: It appears that the two-year period this case could remain in the reserve file was due to expire on April 30, 1976. On that very date, plaintiff moved* to extend the time within which the case could remain in the reserve file until June 30, 1976. Defendant opposed plaintiff's motion for extension of time on the ground that the motion stated no reasons for the extension. Plaintiff interposed no response to defendant's opposition; but on July 7, 1976 plaintiff filed a motion to suspend the case. On July 16, 1976 this court entered an order dismissing the case for lack of prosecution, and consequently the motion to suspend became moot.

Plaintiff now seeks to vacate the order of dismissal and again seeks to suspend the case. Defendant contends that plaintiff's motion fails to comply with rule 12.1(b). That rule reads:

(b) Grounds: Such motion must clearly state the grounds upon which the moving party relies for the granting of such rehearing or retrial. If the grounds do not appear of record, the motion must be supported by an affidavit or affidavits setting forth in detail the facts upon which such motion is predicated.

In a word, defendant's opposition to plaintiff's motion is meritorious. Plaintiff has offered absolutely no reason—and indeed made no effort whatever to submit any reason—to indicate why the order of dismissal was improper; nor did plaintiff state any ground whatsoever for a rehearing. Moreover, plaintiff did not support its motion with an affidavit "setting forth in detail the facts upon which such motion is predicated". Plainly, there has been a failure by plaintiff to comply with rule 12.1(b), and no cause is shown for reconsideration of the order of July 16, 1976. This court does not desire to swallow a camel or strain at a gnat. The short of the matter is that plaintiff has created a procedural morass. Rule 12.1(b) is not a snare, nor does it show a fascinating resemblance to an illusion. Indeed, its provisions are crystal clear.

Accordingly, plaintiff's motion must be denied.

*Parenthetically, the moving papers contained a certificate of service stating that said application had been served by mailing on April 30, 1976. However, the Clerk rejected the motion on the ground that the envelope was postmarked May 1, 1976, and the motion was actually received by the Clerk on May 4, 1976. Plaintiff subsequently moved to correct the date of filing of the motion, and the court granted such motion.

Decisions of the United States Customs Court *Abstracts* *Abstracted Protest Decisions*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Par or Item No. and Rate	HELD Par or Item No. and Rate	BASIS	PORT OF ENTRY AND MERCHANDISE
778/197	Ford, J. August 25, 1976	American Express Co., a/c Handcraft Import- ing Co., et al.	89/10639, etc.	Item 633.37 17%, 15% or 15%	Item 633.35 9%, 8% or 7%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1157 1159)	Los Angeles Candleholders, candlesticks, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED Per or Item No. and Rate	HELD Per or Item No. and Rate	BASIS	PORT OF ORIGIN AND MERCHANDISE
F76/196	Ford, J. August 25, 1976	Morris Friedman	69-5364, etc.	Item 653.37 17%, 15% or 13%	Item 653.35 9%, 8% or 7%	U.S. v. Morris Friedman & Co. (C.A.D. 1156)	Philadelphia Candlesticks, candleholders, etc.; table, floor or portable indoor lamps, of brass
F76/199	Ford J. August 25, 1976	Pacific Coast Commercial, Inc., et al.	72-5-00095, etc.	Item 653.37 15% or 11%	Item 653.35 7% or 6%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1157, 1158)	Los Angeles Candleholders, candlesticks, etc.
F76/200	Ford, J. August 25, 1976	Quon Quon Co.	71-8-00893, etc.	Item 653.37 15% or 11%	Item 653.35 17% or 6%	U.S. v. Morris Friedman & Co. (C.A.D.'s 1157, 1158)	Los Angeles Candleholders, candlesticks, etc.

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AUGUST 25, 1976

APPEAL 75-31.—United States v. Sumitomo-Shoji, New York, Inc.—
FOOTWEAR—ARTICLES OF CARBON—MANUFACTURED ARTICLES
OF SYNTHETIC RUBBER—TRADE AGREEMENT.—C.D. 4595 af-
firmed May 13, 1976. C.A.D. 1169.

Appeal to the United States Court of
Customs and Patent Appeals

APPEAL 76-35.—United States v. E. Besler & Company, a/c Sickles,
Inc., et al.—PRINTERS AND PARTS—ENLARGERS AND CAMERA-
ENLARGERS AND PARTS—PHOTOFINISHING EQUIPMENT—ELEC-
TRICAL ARTICLES AND PARTS—CAMERAS—TSUS. Appeal from
C.D. 4661.

The merchandise in this case, described as Homrich-Internegative Printers and various parts thereof, was assessed, as to the printers, at 13 or 9 percent ad valorem, depending upon the date of entry, under the provision in item 722.18, Tariff Schedules of the United States, as modified by T.D. 68-9, for other enlargers and camera-enlargers and, as to the parts, at 18 or 12 percent, depending upon the date of entry, under the provision in item 722.34, as modified by T.D. 68-9, for other parts of any of the foregoing enlargers and camera-enlargers. Plaintiffs-appellees claimed that the merchandise was properly dutiable at 9 or 6 percent, depending upon the date of entry, under the provision in item 722.94, as modified by T.D. 68-9, as other equipment specially designed for photofinishing (still pictures), not specially provided for, or, alternatively, at 10 or 6.5 percent, depending upon the date of entry, under the provision in item 688.40, as modified by T.D. 68-9, for electrical articles and electrical parts of articles, not specially provided for. Defendant-appellant claimed that the printers should be alternatively assessed at 13 or 9 percent, depending upon the date of entry, under the provision in item 722.16, as modified by T.D. 68-9, for other cameras other than fixed focus valued over \$10 each. The Customs Court held that the printers were dutiable under item 722.94, *supra*, and the parts were dutiable under item 688.40, *supra*, as claimed by plaintiff, and dismissed defendant's counterclaim that the printers were dutiable under item 722.16, *supra*.

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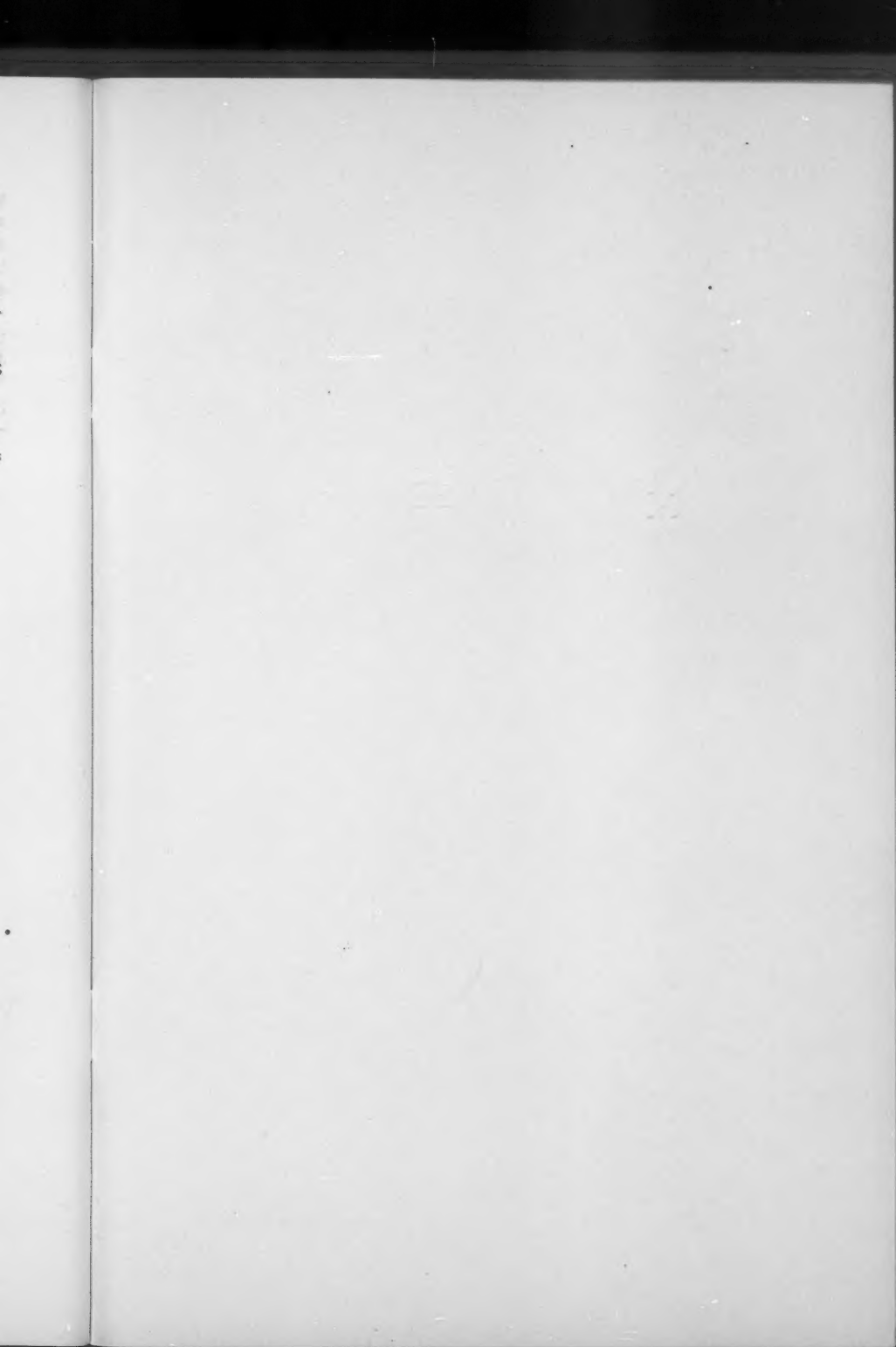
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